

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35305

227 486

**ARKANSAS ELECTRIC COOPERATIVE CORPORATION –
PETITION FOR A DECLARATORY ORDER**

**REPLY OF AMERICAN PUBLIC POWER ASSOCIATION,
EDISON ELECTRIC INSTITUTE, AND
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION
IN SUPPORT OF MOTION TO STRIKE BNSF'S DESIGNATION OF
GREGORY C. FOX TO ARGUE**

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Dated: July 23, 2010

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**REPLY OF AMERICAN PUBLIC POWER ASSOCIATION,
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American Public Power Association ("APPA"), the association of public power electric utilities, Edison Electric Institute ("EEI"), the association of investor-owned electric utilities, and National Rural Electric Cooperative Association ("NRECA"), the association of consumer-owned electric power systems, hereby submit their Reply to the Motion of Arkansas Electric Cooperative Corporation ("AECC") to strike BNSF's Designation of Gregory C. Fox to Argue ("Motion") at the oral argument herein on July 29, 2010.

APPA, EEI, and NRECA agree with AECC, for the reasons stated in AECC's Motion, that BNSF should not be permitted to designate a non-attorney fact witness as an additional oral advocate at what the Board clearly intended to be an oral argument.¹ Unlike some proceedings before the STB, in which the STB invites "testimony," the presentation on July 29, 2010 herein was clearly intended only to be oral argument, by

¹ BNSF already had designated two attorneys to present oral argument on its behalf, before filing its untimely designation of Mr. Fox as a third oral advocate.

attorneys, and not to enlarge the already voluminous record. Allowing a fact witness to present will inevitably enlarge the record.

To the best of the undersigned's knowledge, Mr. Fox is not an attorney or a practitioner admitted to practice before the STB. Rather, he is an executive with BNSF, and he is a fact witness in the proceeding because BNSF chose to make him a fact witness. It follows that BNSF intends to have Mr. Fox testify on July 29, 2010, about factual matters, at what was intended by the Board solely to be an oral argument and not an evidentiary hearing.

Moreover, it appears that all other parties who filed designations of persons to present oral argument confined their timely designations of their oral advocates to attorneys, not fact witnesses, in accordance with the Board's clear instructions in its Decision served June 10, 2010 herein. Therefore, allowing BNSF, long after the deadline for designating attorneys to present oral argument, instead to designate a fact witness as an additional oral advocate, would create unfairness to the other parties, while granting BNSF a benefit that no other party would enjoy.

Therefore, APPA, EEI, and NRECA support the Motion of AECC to strike BNSF's designation of Mr. Fox to present oral argument on July 29, 2010 herein.

Respectfully submitted,

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July 23, 2010

Certificate of Service

I hereby certify that I have served, this 23rd day of July, 2010, a copy of the foregoing pleading on the following:

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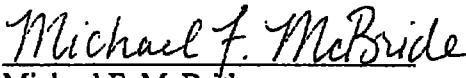
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